

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

FILED

MAR 22 2019

Daniel D. Easterday, Illinois State Rifle Association,)
and Second Amendment Foundation, Inc.,)

Plaintiffs,)

v.)

Village of Deerfield, Illinois, a Municipal)
Corporation,)

Defendant.)

No. 18CH427

Em. Courtney
CIRCUIT CLERK

ORDER

This case is the companion case to Guns Save Life, Inc. v. Village of Deerfield, Illinois, and Harriet Rosenthal, solely in her official capacity as Mayor of the Village of Deerfield, case No. 18CH498. Plaintiffs in this case join the Guns Save Life plaintiffs' preemption arguments under the Illinois Firearm Owners Identification Act and the Firearm Concealed Carry Act in case No. 18CH498 and seek a summary judgment and permanent injunction against the Village of Deerfield. For the reasons stated in this Court's order of March 22, 2019 in case 18CH498, which is attached and incorporated into this order, plaintiffs' motion for summary judgment and permanent injunction is granted.

IT IS HEREBY ORDERED THAT:

1. A permanent injunction is issued enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 and Ordinance No. 0-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or

transport assault weapons or large capacity magazines as defined in these ordinances.

Entered this 22nd day of March 2019.

ENTERED:

Luis A. Berrones

Judge

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS**

FILED

MAR 22 2019

Eric Cantagut Weinstein
CIRCUIT CLERK

Guns Save Life, Inc. and John William
Wombacher, III.,

Plaintiffs,

v.

Village of Deerfield, Illinois, and Harriet
Rosenthal, solely in her official capacity as
Mayor of the Village of Deerfield,

Defendants.

18CH498

MEMORANDUM ORDER

Before the Court are plaintiffs' motion for a preliminary injunction and motion for summary judgment.¹ Plaintiffs initially sought a preliminary injunction but later filed a motion for summary judgment requesting a permanent injunction to permanently enjoin defendant Village of Deerfield from enforcing Ordinance No. 0-18-06 and Ordinance No. 0-18-19 which ban the ownership and possession of assault weapons and large capacity magazines.² The plaintiffs' seven count complaint challenges the validity of Deerfield's ordinances and alleges that: (1) Ordinance No. 0-18-06 is preempted by Illinois' Firearm Owners Identification Card Act (FOICA) and Firearm Concealed Carry Act (FCCA); (2) Ordinance No. 0-18-06 is preempted by

¹ The plaintiffs in the companion case of Daniel D. Easterday, Illinois State Rifle Association and Second Amendment Foundation, Inc. v. Village of Deerfield, Illinois, a municipal corporation, in case number 18CH427 join plaintiff Guns Save Life's motion for a preliminary injunction and motion for summary judgment.

² Plaintiffs identify Deerfield's ordinance as Ordinance No. 0-18-24-3, however, the Village of Deerfield attached a copy of the relevant ordinance as an exhibit to its response brief and the exhibit reflects that the correct number is 0-18-19. Ordinance No. 0-18-19 was passed by the Village of Deerfield following the Court's finding that Ordinance No. 0-18-06 did not ban firearm magazines that accept more than ten rounds. Deerfield stayed enforcement of Ordinance No. 0-18-19 pending the hearing and ruling on plaintiffs' request for a preliminary injunction. Plaintiffs did not file an amended complaint to challenge this new ordinance, however, the parties agreed that the hearing for a preliminary injunction should include a determination of the validity of Ordinance No. 0-18-19.

the Illinois Wildlife Code (Wildlife Code); (3) they are entitled to a declaratory judgment that Ordinance No. 0-18-06 does not ban large capacity magazines;³ (4) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 banning large capacity magazines are preempted by FOICA and the FCCA; (5) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 banning large capacity magazines are preempted by the Wildlife Code; (6) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 violate the Takings Clause of the Illinois Constitution; and (7) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 violate the Eminent Domain Act.⁴

The defendants presented testimony in opposition to plaintiffs' request for a preliminary injunction. The Court heard the testimony of two witnesses, Harriet Rosenthal, the Village of Deerfield's President, and Kent S. Street, the Village Manager for the Village of Deerfield. President Rosenthal's and Mr. Kent's testimony related to of Deerfield's ability to regulate firearms under the state statutes and Deerfield's intent and reasons for passing the ordinances challenged by plaintiffs. The defendants' evidence also included a video clip of a June 17, 2013 Village Board meeting in which State Representative Scott Drury spoke during the public comments session and spoke about pending House Bill 183 relating to the State's regulation of firearms and firearm components. Plaintiffs objected to this evidence as being irrelevant because the issues before the Court can be decided as a matter of law and the Court need only consider the ordinances, the various state statutes and the Illinois Constitution. The Court reserved ruling on plaintiffs' objection. The Court now finds that the evidence presented by defendants at the October 12,

³ This issue is now moot due to the passage of Ordinance No. 0-18-19.

⁴ Plaintiffs in the Easterday case only raise a preemption challenge under the FOICA and FCCA to Deerfield's ordinances.

2018 preliminary injunction hearing is irrelevant to resolving the preemption issue. The preemption challenge only raises questions of law. The Court will therefore not consider the witnesses' testimony or the video recording with respect to plaintiffs' preemption challenges. For the following reasons, the Court grants plaintiffs' request for a summary judgment and enters a permanent injunction enjoining Deerfield from enforcing Ordinance No. 0-18-06 and Ordinance No. 0-18-19.

FACTS

The relevant facts are not in dispute. On July 1, 2013, Deerfield passed Ordinance No. 0-13-24 titled "AN ORDINANCE REGULATING THE OWNERSHIP AND POSSESSION OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD". Ordinance No. 0-13-24: (1) defines what constitutes an assault weapon (§15-86); (2) defines what constitutes a large capacity magazine (§15-86); (3) mandates how assault weapons should be stored (§15-87); (4) mandates how assault weapons should be transported within Deerfield's village limits (§15-88); (5) makes it unlawful to carry or possess an assault weapon within Deerfield's corporate limits unless the person is on his land, his abode, legal dwelling or fixed place of business or unless the person is on the land or in the dwelling of another person as an invitee with that person's permission (§15-88); and (6) provides for a fine between \$250.00 to \$1,000.00 for each violation (§15-89). Ordinance No. 0-13-24 did not prohibit ownership or possession of an assault weapon or high capacity magazine within Deerfield's corporate limits. The purpose of Ordinance No. 0-13-24 is stated on page two in the final "Whereas" clause which provides: "[A]ssault weapons should be subject to safe storage and security requirements as provided herein to limit the opportunity for access and use of firearms by untrained or unauthorized users[.]"

On July 9, 2013, the Illinois legislature amended §13.1 of the FOICA. Section 13.1 of FOICA provides:

Preemption.

(a) Except as otherwise provided in the Firearm Concealed Carry Act and subsections (b) and (c) of this Section, the provisions of any ordinance enacted by any municipality which requires registration or imposes greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act, are not invalidated or affected by this Act.

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, "assault weapons" means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of "assault weapon" under the ordinance.

(d) For the purposes of this Section, "handgun" has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act.

(e) This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

430 ILCS 65/13.1 (West 2018).

On July 9, 2013, the Illinois legislature also passed the FCCA. The FCCA provides in part:

Preemption.

The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

430 ILCS 66/90 (West 2018).

“Handgun” means any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand.”

430 ILCS 66/5 (West 2018).

On April 2, 2018 Deerfield passed Ordinance No. O-18-06 titled “AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT), ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT WEAPONS) OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD”. Ordinance No. O-18-06 made minor changes to §15-86 dealing with definitions and made more extensive changes to: (1) §15-87 Safe Storage of Assault Weapons; (2) §15-88 Transportation of Assault Weapons; and (3) §15-89 Penalty. Ordinance No. O-18-06 adopted two new sections, §15-90 addressing Disposition of Assault Weapon and Large Capacity

Magazine and §15-91 addressing Destruction of Assault Weapons and Large Capacity

Magazines.

The additional provisions of Ordinance No. 0-18-06 that plaintiffs challenge are as follows:⁵

Sec. 15-87. Safe Storage of Assault Weapons; Exceptions

(a) ~~Safe Storage.~~ It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village, ~~unless such weapon is secured in a locked container or equipped with a tamper resistant mechanical lock or either safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.~~

(b) ~~Self defense exception.~~ No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self defense or in defense of another.

(c) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any

⁵ All changes to the challenged ordinances are reflected by showing the additions with underscoring and the deletions with strikeouts in the text.

such law enforcement officer, service member or qualified retired law enforcement officer.

Section 15-88. Transportation of Assault Weapons; Exceptions.

(a) It is unlawful and a violation of this section for any person to carry, keep, bear, transport or possess an assault weapon in the Village, ~~except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another as an invitee with that person's permission,~~ except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; ~~or~~ and
- (ii) are not immediately accessible to any person; or
- (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card; ~~or~~

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

Section 15-89. Penalty.

Any person who is found to have violated this Article shall be fined not less than \$250 and not more than \$1,000 for each offense ~~and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.~~ Every person convicted of any violation under this Article shall, in addition to any penalty provided in this Code, forfeit to the Village any assault weapon.

Section 15-90. Disposition of Assault Weapon and Large Capacity Magazine.

Any person who, prior to the effective date of Ordinance No. _____, was legally in possession of an Assault Weapon or Large Capacity Magazine prohibited by this Article, shall have 60 days from the effective date of Ordinance No. _____, to do any of the following without being subject to prosecution hereunder:

(a) Remove, sell or transfer the Assault Weapon or Large Capacity Magazine from within the limits of the Village;

(b) Modify the Assault Weapon or Large Capacity Magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an Assault Weapon or large capacity Magazine; or

(c) Surrender the Assault Weapon or Large Capacity Magazine to the Chief of Police or his or her designee for disposal as provided in Section 15-91 of this Article.

Section 15-91. Destruction of Assault Weapons and Large Capacity Magazines.

The Chief of Police or his or her designee shall have the power to confiscate any assault Weapon of any person charged with a violation under this Article. The Chief of Police shall cause to be destroyed each Assault Weapon or Large Capacity Magazine surrendered or confiscated pursuant to this Article; provided, however, that no Assault Weapon or Large Capacity Magazine shall be destroyed until such time as the Chief of Police determines that the assault Weapon or Large Capacity Magazine is not needed as evidence in any matter. The Chief of Police shall cause to be kept a record of the date and method of destruction of each Assault Weapon or Large Capacity Magazine destroyed pursuant to this Article.

On June 12, 2018, this Court entered a temporary restraining order enjoining the Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 relating to the ownership, possession, storage or transportation of assault weapons or large capacity magazines within the Village of Deerfield. On June 18, 2018, the Village of Deerfield passed Ordinance No. 0-18-19 to correct an omission in §15-87 of

Ordinance No. 0-18-06 relating to high capacity magazines.⁶ Deerfield also renamed §15-87 to reflect that this section no longer addressed the safe storage of assault weapons, but that Deerfield was now banning assault weapons and large capacity magazines. Section 15-87 now reads as follows:

SECTION 2: AMENDMENT. Section 15-87 of Article 11 of Chapter 15 of the Village Code is hereby re-titled and amended further to read as follows:

“Sec. 15-87, ~~Safe Storage Of Assault Weapons~~ and Large Capacity Magazines Prohibited; Exceptions:

(a) It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon or large capacity magazine in the village.

(b) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon or large capacity magazine in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner’s Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

The Village of Deerfield delayed enforcement of Ordinance No. 0-18-19 pending resolution of

⁶ Deerfield characterizes Ordinance No. 0-18-19 as a clarification of that portion of Ordinance No. 0-18-06 that Deerfield claims bans ownership and possession of high capacity magazines. Deerfield’s characterization of Ordinance No. 0-18-19 is wholly without merit as Ordinance No. 0-18-06 clearly failed to ban ownership or possession of high capacity magazines.

plaintiffs' challenge to Deerfield's authority to regulate possession or ownership of large capacity magazines.

Plaintiffs raise the following challenges to the validity of the ordinances: (1) Whether the State preempted Deerfield's authority to exercise concurrent power to regulate assault weapons or large capacity magazines pursuant to the Home Rule provisions of the Illinois Constitution. (2) Whether the changes to Ordinance No. 0-13-24 made by Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are amendments to Ordinance No. 0-13-24 or new ordinances that are preempted by the provisions of FOICA, FCCA and the Wildlife Code. and (3) Whether Ordinance No. 0-18-16 and Ordinance No. 0-18-19 violate the takings clause of Article 1, Section 15 of the Illinois Constitution and §10-5-5 of the Eminent Domain Act.

ANALYSIS

Plaintiffs originally sought a preliminary injunction but after the evidentiary hearing plaintiffs filed a motion for summary judgment and now seek a permanent injunction. Summary judgment is appropriate when the pleadings, depositions, affidavits and the admissions of record when construed strictly against the moving party and liberally in favor of the opponent show that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law. *Seymour v. Collins*, 2015 IL 118432, ¶42, 39 N.E.3d 961, 974; *Old Kent Bank – St. Charles, N.A. v. Surwood Corp.*, 256 Ill. App.3d 221, 229, 627 N.E.2d 1192, 1198 (2d Dist. 1994). The party moving for summary judgment has the burden to show that no genuine issue of material fact exists with respect to all issues including those issues raised by the pleading of affirmative defenses. *Old Kent Bank – St. Charles, N.A. v. Surwood Corp.*, 256 Ill. App.3d at 230, 627 N.E.2d at 1199; *West Suburban Mass Transit Dist. v.*

Consolidated Rail Corp., 210 Ill. App.3d 484, 488-89, 569 N.E.2d 187, 190 (1st Dist. 1991). A party seeking a permanent injunction to preserve the status quo indefinitely “must show that he possesses a clear, protectable interest for which there is no adequate remedy at law and that irreparable injury would result if the relief is not granted.” *Sheehy v. Sheehy*, 299 Ill. App. 3d 996, 1003–04, 702 N.E.2d 200, 206 (1st Dist. 1998).

I. Preemption

Deerfield in the exercise of its home rule powers adopted Ordinance No. O-13-24.

As a home rule unit, Deerfield’s home rule power and the State’s authority to limit such home rule authority is derived from Article 7, §6 of the Illinois Constitution which provides in relevant part:

(a) ... Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

ILL. CONST. art. VII, § 6 (a), (h), and (i) (West 2018). Section 6(a) authorizes a home rule unit to exercise any power and perform any function pertaining to its government affairs except as limited by the State pursuant to Article 7, §6(h). Section 6(h) empowers the General Assembly to deprive home rule units from exercising any powers that the General Assembly determines should be exercised exclusively by the State. This preemption of home rule authority occurs

under Section 6(h) of the Illinois Constitution when the State specifically declares that the State's exercise of such power or function is exclusive.

Our Supreme Court in a comprehensive preemption opinion in *City of Chicago v. Roman*, 184 Ill.2d 504, 705 N.E.2d 81 (1998), discussed how the State preempts a home rule unit from acting on a subject that the State asserts exclusive power to regulate and how the State can limit the home rule unit's concurrent exercise of power without preempting that exercise of power. The Court held that: "[To] meet the requirements of section 6(h), legislation must contain express language that the area covered by the legislation is to be exclusively controlled by the State. *Id.*, 184 Ill.2d at 517, 705 N.E.2 at 89. The Court also stated that:

When the General Assembly intends to preempt or exclude home rule units from exercising power over a matter, that body knows how to do so. In many statutes that touch on countless areas of our lives, the legislature has expressly stated that, pursuant to section 6(h) or 6(i), or both, of article VII of the Illinois Constitution, a statute is declared to be an exclusive exercise of power by the state and that such power shall not be exercised by home rule units.

Id. The Court then went on to discuss several examples of legislation where the legislature totally excluded or preempted home rule authority to regulate. These statutory provisions are:

1. Section 17 of the Illinois Health Facilities Planning Act which provides:

It is hereby specifically declared that the powers and functions exercised and performed by the State pursuant to this Act **are exclusive to the State of Illinois** and that these powers and functions shall not be exercised, either independently or concurrently, by any home rule unit. 20 ILCS 3960/17 (West 1992) (emphasis added).

2. Section 2.1 of the Illinois Insurance Code which provides:

Public Policy. It is declared to be the public policy of this State, **pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970**, that any power or function set forth in this Act to be **exercised by the State is an exclusive State power or function**. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act. ... [A]nd said Section 415 of this Act is declared to be a

denial and limitation of the powers of home rule units pursuant to paragraph (g) of Section 6 of Article VII of the Illinois Constitution of 1970. 215 ILCS 5/2.1 (West 1992) (emphasis added).

3. Section 21 of the Citizens Utility Board Act which provides:

Home rule preemption. The provisions of this Act are declared to be **an exclusive exercise of power by the State of Illinois pursuant to paragraphs (h) or (i) of Section 6 of Article VII of the Illinois Constitution**. No home rule unit may impose any requirement or regulation on any public utility inconsistent with or in addition to the requirements or regulations set forth in this Act. 220 ILCS 10/21 (West 1992) (emphasis added).

4. Section 6 of the Medical Practice Act of 1987 which provides:

It is declared to be the public policy of this State, **pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970**, that any power or function set forth in this Act to be exercised by the State **is an exclusive State power or function**. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act. 225 ILCS 60/6 (West 1992) (emphasis added).

5. Section 6-18 of the Liquor Control Act of 1934 which provides:

No home rule unit, as defined in Article VII of the Illinois Constitution, may amend or alter or in any way change the legal age at which persons may purchase, consume or possess alcoholic liquors as provided in this Act, and it is declared to be the law of this State, **pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Constitution**, that the establishment of such legal age is an **exercise of exclusive State power** which may not be exercised concurrently by a home rule unit. 235 ILCS 5/6–18 (West 1992) (emphasis added).

6. Section 7 of the Missing Children Registration Law which provides:

Home rule. This Article shall constitute the **exercise of the State's exclusive jurisdiction** pursuant to **subsection (h) of Section 6 of Article VII of the Illinois Constitution** and **shall preempt the jurisdiction of any home rule unit**. 325 ILCS 55/7 (West 1992) (emphasis added).

7. Section 2 of the Burial of Dead Bodies Act which provides;

No home rule unit, as defined in Section 6 of Article VII of the Illinois Constitution, may

change, alter or amend in any way the provisions contained in this Act, and it is declared to be the law of this State, **pursuant to subsections (h) and (i) of Section 6 of Article VII of the Illinois Constitution**, that powers and functions authorized by this Act **are the subjects of exclusive State jurisdiction**, and no such powers or functions may be exercised concurrently, either directly or indirectly, by any home rule unit. 410 ILCS 5/2(c) (West 1992) (emphasis added).

8. Section 2 of the Wildlife Code which provides:

The regulation and licensing of the taking of wildlife in Illinois are **exclusive powers and functions of the State**. A home rule unit may not regulate or license the taking of wildlife. This Section is a **denial and limitation of home rule powers** and functions under **subsection (h) of Section 6 of Article VII of the Illinois Constitution**. 410 ILCS 5/2 (West 1992) (emphasis added).

9. Section 11-208.2 of the Illinois Vehicle Code which provides:

Limitation on home rule units. The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to Sections 11-208, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2 of this Chapter of this Act. 625 ILCS 5/11-208.2 (West 1992) (emphasis added).

The General Assembly may limit a home rule unit's concurrent exercise of power without completely preempting such power through partial exclusion or conformity. *City of Chicago v. Roman*, 184 Ill.2d at 519, 705 N.E.2d at 90. "[T]he General Assembly knows how to accomplish this, and has done so countless times, expressly stating that, pursuant to article VII, section 6(i), of the Illinois Constitution, a statute constitutes a limitation on the power of home rule units to enact ordinances that are contrary to or inconsistent with the statute". *Id.*, 184 Ill.2d at 520, 705 N.E.2d at 90. Examples of statutes in which the State through its expression in the statute provided for partial exclusion or conformity of a home rule unit's authority to exercise its power to regulate over those matters are:

1. Section 5-919 of the Illinois Highway Code which provides:

Home Rule Preemption. A home rule unit may not impose road improvement impact fees in a manner inconsistent with this Division. This Division is a limitation under

subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State. 605 ILCS 5/5-919 (West 1992).

2. Section 8 of the Carrier and Racing Pigeon Act of 1984 which provides:

This Act applies to all municipalities and counties and pursuant to paragraph (i) of Section 6 of Article VII of the Constitution, this Act is a limitation upon the power of home rule units to enact ordinances contrary to this Act. 510 ILCS 45/8 (West 1992).

The preemption language in the FOICA and the FCCA mirrors the language in those statutes our Supreme Court has stated have totally excluded or preempted a home rule unit's authority to regulate. The preemption language in FOICA states:

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act **are exclusive powers and functions of this State.** (emphasis added).

c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons **are exclusive powers and functions of this State.** (emphasis added).

(e) This Section is **a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.** (emphasis added).

The language in the FCCA states:

Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. **This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.** (emphasis added).

The language in FOICA and FCCA clearly state that home rule units no longer have the authority to regulate or restrict the licensing and possession of handguns and handgun ammunition with respect to a holder of a valid Firearm Owner's Identification Card or a holder of a license to

carry a concealed firearm. In addition, §13.1(c) of FOICA clearly deprives home rule units of the authority to regulate the possession or ownership of assault weapons. Deerfield, therefore, may no longer regulate in these areas.

The plaintiffs also claim that the Wildlife Code preempts Deerfield's ability to regulate assault weapons and large capacity magazines. The Wildlife Code provides:

The regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State. A home rule unit may not regulate or license the taking of wildlife. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

410 ILCS 5/2 (West 1992). The Wildlife Code does specifically preempt regulation and licensing of the taking of wildlife and references what types of firearms may be used to accomplish the taking of wildlife. The Wildlife Code, however, is a statute regulating the hunting and taking of game in Illinois and not a statute regulating ownership and possession of firearms. Any regulation as to what firearms may be used to hunt is secondary to the subject matter the State is preempting in the Wildlife Code. Moreover, nothing presented to the Court shows that the taking of wildlife occurs within Deerfield's borders or that the challenged ordinances have any impact on the taking of wildlife outside of Deerfield's borders.

Deerfield claims that the language in §13.1 allowing for inconsistent ordinances and amendments shows the legislature did not intend to preempt this area. The Court does not agree. The specific language in §13.1(e) of FOICA repeats and emphasizes the General Assembly's intent to preempt by stating: "This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution. 430 ILCS 65/13.1(e) (West 2018). This final provision in the statute's preemption section leaves no doubt what the General Assembly intended to do; and that is to preempt the regulation of

this subject matter. The Illinois Constitution prescribes the extent of a home rule unit's authority to exercise power over matters preempted by the State. When the State preempts an area by declaring that it is exercising exclusive power to regulate specific matters as provided for in the Illinois Constitution, and passes a law that incorporates and declares that it is exercising that exclusive power pursuant to Section 6(h) of Article VII of the Illinois Constitution, the only result that can follow from the use of this Constitutional language is to deprive the home rule unit of all authority to regulate in that area. To accept Deerfield's argument requires this Court to dilute the State's constitutional authority and the mandate of our Illinois Constitution under Article 7, §6(h). The legislature is presumed to know the law and if the State wished to allow home rule units to have authority to regulate in this area through partial exclusion or conformity it has the knowledge and ability to do so.

Deerfield also asserts that in interpreting statutes the Court should give all statutory provisions meaning and effect; however, the cases relied upon by Deerfield make clear that the Court is to interpret statutes this way "if possible". In this case it is not possible to accept Deerfield's argument without diminishing the language in Section 6(h), Art. VII of the Illinois Constitution. Deerfield's position requires the Court to hold that Section 6(h) doesn't mean what it says. If the General Assembly did not wish to preempt regulation of this subject matter, the General Assembly can amend its statute. This Court will not ignore the meaning and consequences of our Illinois Constitution's provisions to accommodate Deerfield's statutory interpretation. Thus, Deerfield lost its authority to regulate possession or ownership of assault weapons and large capacity magazines when the State passed §13.1 of FOICA and the FCCA.

Deerfield also claims that Ordinance No. 0-18-06 is an amendment to Ordinance No. 0-

13-24 which was validly enacted in accordance with the ten-day window FOICA provided home rule units to pass inconsistent ordinances. Plaintiffs assert that the changes to Deerfield's ordinance was not an amendment but was an entirely new ordinance that does not comply with the preemption exception in the FOICA. In determining whether changes to an ordinance are amendments or a new ordinance repealing the prior ordinance, our Supreme Court and Appellate Court have provided clear guidelines for the trial courts. Deerfield's characterization of Ordinance No. O-18-06 as an amendment of Ordinance No. O-13-24 is not dispositive of whether it is an amendment or a new ordinance that repealed the prior ordinance. "Where an amendatory ordinance is enacted which re-enacts some of the provisions of the former ordinance, such portions of the old ordinance as are repeated or retained, either literally or substantially, are to be regarded as a continuation of the old ordinance and not as the enactment of a new ordinance on the subject or as [the] repeal of the former ordinance."

Village of Park Forest v. Wojciechowski, 29 Ill.2d 435, 438, 194 N.E.2d 346, 348 (1963); *Athey v. City of Peru*, 22 Ill. App.3d 363, 367, 317 N.E.2d 294, 297 (3d Dist. 1974). If, however, there is a clear conflict between the two ordinances where both cannot be carried out, then an intention to repeal will be presumed. *Nolan v. City of Granite City*, 162 Ill. App.3d 187, 188, 514 N.E.2d 1196, 1199 (5th Dist. 1987). To resolve the issue of whether the changes are an amendment or a new ordinance, the court must perform a comparative analysis of the ordinances and analyze all its terms. *Athey v. City of Peru*, 22 Ill. App.3d at 367-368, 317 N.E.2d at 297-298.

In comparing the language of Ordinance No. O-13-24 to the language of Ordinance No. O-18-06 there exists significant differences between the two ordinances. Ordinance No. O-13-24 only regulated transportation and storage of assault weapons within Deerfield's village limits

and provided for penalties for improperly transporting or storing such weapons. While §§15-87 and 15-88 of Ordinance No. 0-18-06 keep the same titles these sections had in Ordinance No. 0-13-24 (§15-87 Safe Storage of Assault Weapons; Exceptions, §15-88 Transportation of Assault Weapons; Exceptions); the new text in Ordinance No. 0-18-06 under these sections does not deal with transporting or storing assault weapons but instead bans such weapons. Ordinance No. 0-13-24 did not ban ownership or possession of assault weapons or large capacity magazines within Deerfield's village limits. The banning of assault weapons is substantively different than regulations regarding the transportation and storage of such weapons by one who owns or possesses assault weapons. In addition, there are two sections that are entirely new. Section 15-90 Disposition of Assault Weapon and Large Capacity Magazine and §15-91 Destruction of Assault Weapons and Large Capacity Magazines in Ordinance No. 0-18-06 that are not found in Ordinance No. 0-13-24. These additional sections in Ordinance No. 0-18-06 supports plaintiffs' claim that the changes to Ordinance No. 0-13-24 resulted in a new ordinance and not an amended ordinance. For these reasons Ordinance No. 0-18-06 is a new ordinance and not an amendment.

Even if the Court agreed with Deerfield's interpretation of §13.1 of FOICA that the General Assembly only meant to partially exclude a home rule unit's authority to regulate possession and ownership of large capacity magazines and assault weapons; and that Deerfield's Ordinance No. 0-18-06 is an amendment of Ordinance No. 0-13-24, Deerfield's Ordinance No. 0-18-06 is still unenforceable under plaintiffs' preemption argument because Deerfield missed the 10-day window provided under §13.1(c) of FOICA. This section of FOICA clearly states that the 10-day window is to allow home rule units an opportunity to pass

ordinances that regulate possession or ownership of assault weapons that are “inconsistent” with FOICA. FOICA allows possession or ownership of assault weapons by any person who has been previously issued a Firearm Owner’s Identification Card by the State Police. 430 ILCS 65/2(a)(1) (Firearm Owner’s Identification Card required; exceptions.) and 430 ILCS 65/1.1 (defining firearm). Nothing in Ordinance No. 0-13-24 is “inconsistent” with any provision of FOICA as this ordinance merely regulates the transportation and storage of assault weapons. In giving the language of §13.1(c) its plain meaning FOICA provided home rule units a one-time 10-day window from the date of this section’s effective date to ban ownership or possession of assault weapons. Deerfield clearly failed to enact such a ban within this ten-day window and therefore, lost its opportunity to do so and cannot later amend its ordinance to impose such a ban. Deerfield’s assertion that this interpretation of §13.1(c) effectively deletes the language permitting amendments to ordinances passed during this 10-day window is not persuasive. The purpose of the amendment provision in §13.1(c) is to allow a home rule unit to expand its timely ban of assault weapons if the initial ordinance did not address all weapons that could have been classified as assault weapons, or if new assault type weapons not fitting into the ordinance’s assault weapon definition began to be manufactured or became available for purchase. For example, if Ordinance No. 0-13-24 had banned the assault weapon defined in §15-86(2) and several years later a manufacturer came out with a semiautomatic rifle that had a fixed magazine that only accepted ten rounds of ammunition such a weapon would not be an assault weapon as defined in the ordinance. Deerfield could arguably amend Ordinance No. 0-13-24 to redefine assault weapons to include semiautomatic rifles that have fixed magazines that accept ten rounds if Deerfield determined that these new semiautomatic rifles posed the

same threat to safety as those semiautomatic rifles that have fixed magazines that accept more than ten rounds. In this scenario, an amendment might be authorized.

II. Takings Clause and Eminent Domain

Plaintiff's last challenge to Ordinance No. 0-18-06 and Ordinance No. 0-18-19 is that the ordinances violate Article 1, Section 15 of the Illinois Constitution and §10-5-5 of the Eminent Domain Act, 735 ILCS 30/10-5-5 (West 2018). For the reasons stated in this Court's order of June 12, 2018, plaintiffs have not met their burden for the issuance of a preliminary injunction under these theories and genuine issues of material fact exist that preclude the entry of a summary judgment and permanent injunction under these theories.

III. THE COURT'S FINDINGS

The Court finds that: (1) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are preempted by the FOICA and the FCCA and therefore unenforceable. (2) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are new ordinances and not amendments to Ordinance No. 0-13-24 and are therefore preempted by FOICA and FCCA. (3) FOICA provided home rule units up to ten days from the effective date of FOICA's preemption provision to pass ordinances that regulate possession or ownership of assault weapons that are inconsistent with the regulations of assault weapons in FOICA. Nothing in Ordinance No. 0-13-24 is inconsistent with FOICA's regulation of assault weapons, therefore, Deerfield missed its opportunity to ban assault weapons and cannot do so now with Ordinance No. 0-18-06. (4) There is no genuine issue of material fact that Deerfield's ordinances are preempted and that plaintiffs: (a) have a clearly ascertainable right to not be subject to a preempted and unenforceable ordinance's prohibitions, fines, penalties and confiscation of property; (b) will suffer irreparable harm if an

injunction is not entered; and (c) do not have an adequate remedy at law. (5) Genuine issues of material fact exist with respect to plaintiffs' takings claim under the Illinois Constitution and the Eminent domain statute. and (6) The Wildlife Code does not preempt Deerfield's regulation of assault weapons or large capacity magazines.

IT IS HEREBY ORDERED THAT:

1. A permanent injunction is issued enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 and Ordinance No. 0-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.

2. A status hearing is scheduled on May 3, 2019 at 9:00 a.m. in courtroom C-204.

Entered this 22nd day of March 2019.

ENTER:

Judge